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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 KASI A. FOSS,)
11 Plaintiff,) No. CV-07-091-CI
12 v.) ORDER REMANDING CASE
13 MICHAEL J. ASTRUE,) TO THE COMMISSIONER
14 Commissioner of Social)
15 Security,)
Defendant.)

16 **BEFORE THE COURT** are Plaintiff's Objections to the Report and
17 Recommendation in the captioned matter. Plaintiff is represented by
18 Maureen J. Rosette. Daphne Banay, Special Assistant U.S. Attorney,
19 and Frank A. Wilson, Assistant U.S. Attorney, represent the
20 Defendant.

21 The undersigned, having reviewed the file, the Report and
22 Recommendation, the Objections and Response, concludes that claimant
23 has met her burden of establishing step two's requirement of a
24 "severe" impairment as to left arm pain and left ankle pain.
25 Accordingly, the undersigned does not adopt the Report and
26 Recommendation and concludes the ALJ's decision must be reversed.
27 The captioned matter is remanded to the Commissioner with direction
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1 to evaluate Plaintiff's severe impairments beyond step two.¹ Although
2 Plaintiff may not succeed in proving she is disabled, as defined by
3 the Social Security Act, the ALJ lacked substantial evidence to find
4 no medically severe impairment.

5 Judgment shall be entered for Plaintiff. An application for
6 attorney fees may be filed by separate motion.

7 **IT IS SO ORDERED.**

8 **DATED** this 5th day of February, 2008.

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10 s/ Fred Van Sickle
Fred Van Sickle
11 United States District Judge
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23 ¹Step two is "de minimis screening device [used] to dispose of
24 groundless claims," *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.
25 1996); an ALJ may find that a claimant lacks medically severe
26 impairments only when this conclusion is "clearly established by
27 medical evidence." S.S.S.R. 85-28; see *Web v. Barnhart*, 443 F.3d
28 683, 686-87 (9th Cir. 2005).